COURT OF APPEALS NO. 56121-2

BEFORE THE WASHINGTON STATE COURT OF APPEALS

DIVISION TWO

DEBORAH OSBORNE,

Appellant,

vs.

THADDEUS MARTIN,

Respondent.

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On Appeal from the Pierce County Superior Court
Tacoma, WA
Case No. 21-2-05143-1

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APPELLANT'S AMENDED OPENING BRIEF

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I. INTRODUCTION

On July 22, 2021, The Honorable Stanley J. Rumbaugh, Judge, granted an order for summary judgment in favor of Thaddeus Martin ("Defendant or Respondent") without a hearing on the motion and without showing evidence that there are no disputed issues of material fact. CR 56(a) provides there must be no genuine issue of material fact for a summary judgment to be properly granted.

There were no pretrial conferences to allow the parties to work towards a resolution of dispute and to simplify the issues and eliminate frivolous claims or defenses. Martin provided no "answers" in response to Deborah Osborne ("Plaintiff or Appellant") Opposition to Motion for Summary Judgment, filed July 6, 2021, showing evidence that there are disputed issues of material fact.

There was no hearing, no Transcript, no Verbatim Report of Proceedings from a trial court to obtain Court Reporter(s) or Transcriptionist(s); and no Findings of Fact and Conclusions of Law to conclude the court's decision.

The issues in this Appeal relate to errors the Court made when required to duly perform as a matter of fact and law.

In the underlying Case No. 2:15-cv-00223-RSL, Deborah Osborne v. The Boeing Company, The Honorable Robert S. Lasnik, U.S. District Judge, Western District of Washington at Seattle, noted that Martin failed to perform a timely discovery and without a discovery Martin could not investigate any portion of Osborne's "causes of action" as agreed, or profound any Interrogatories and Requests for Admission to Boeing to be answered by defendants in order to clarify matters of fact to develop Osborne's claims with direct evidence and to determine in advance what facts would be presented at trial.

In other words, evidence show Martin fell below the standard of care, and breached his contract to perform to the terms of their agreement. The four elements of a Breach of Contract: 1) The existence of a contract; 2) Performance by the plaintiff or some justification for nonperformance; 3) Failure to perform the contract by the defendant; and 4) Resulting damages to the plaintiff. *W. Distrib. Co. v. Diodosio, 841 P.2d 1053, 1058 (Colo. 1992).*

Osborne was deprived of a fair hearing that violated Constitutional Due Process and her Fifth and Fourteenth Amendment Rights.

The court granted summary judgment for the defense with no basis for its order, *Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986),* there are no evidence identifying those portions of the materials in the record that show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)(1). The order was improper.

II. ASSIGNMENTS OF ERROR

Assignments of Error:

1. Did the court error in its order by not complying with Pierce County Superior Court's directive to ensure a timely and impartial resolution to a legal dispute of parties as required in person or utilizing zoom technology, and thereby violate due process of law?

Did the court error in its order by not complying with its duties faithfully and impartially with respect to person's equal rights?

Did the court error in its order by not complying with Civil Rule 56(c), to identify each claim to show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law?

Did the court error in its order by not providing specific Findings of Fact and Conclusions of Law stating on the record the reasons for granting the motion after the close of the evidence and filed by the court, Pursuant to Fed. R. Civ. P. 52(a); applied both in an action tried on the facts without a jury and also in granting or refusing an interlocutory injunction?

2. Did the court error in its order when it failed to comply with the case schedule established by the Court, Pursuant to Fed. R. Civ. P. 16?

Did the court error in its order when it failed to comply with the Constitutional Due Process, Fifth and Fourteenth Amendment Rights?

Did the court error in its order when it allowed the defendant's improper Motion for Summary Judgment to interfere with the plaintiff's Complaint for Damages case schedule established by the court?

3. Did the court error in its order when it failed to identify those portions of "the pleadings, the discovery and disclosure materials on file, and any affidavits" that show the

absence of a genuine issue of material fact? (Fed. R. Civ. P. 56(c). Did the court error in its order when it failed to recognize that the defendant did not respond with answers and disclosures to the motion sought?

Did the court error in its order to recognize the defendant was in default of its motion and the plaintiffs' claims and defenses?

4. Did the court error in its order when it withheld evidence that the plaintiff demonstrated the existence of triable issues of material fact and a triable issue noted by The Honorable Judge Robert S. Lasnik, U.S. District Judge?

Did the court error in its order when it failed to recognize that the defendant Breach His Contract?

5. Did the court error in its order when it failed to include The Boeing Company, a third-party defendant to the controversy?

Did the court error in its order to oversee the established case schedule and procedures and to conduct the case in accordance with the deadlines established by the court and rule of law?

6. Did the court error in its order when it failed to disqualify[1] itself because of a personal bias and for demonstrating unfairness and partiality.

Did the court error in its order not to Reconsider its decision?

Did the court error in its order not to allow a New Judge to review the case?

Did the court error in its order to replace The Honorable Elizabeth Martin for a personal bias?

7. Did the court error in its order when it failed to resolve the legal dispute of parties lawfully?

Issues Pertaining to Assignments of Error:

1. Why would the court not have a hearing to introduce evidence after less than 3-days of accepting to preside over the case?

Why would the court not comply with its duties faithfully and impartially with respect to a person's equal rights, Pursuant to RCW 35.20.180?

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[1]CP 326

Why would the court not follow two required rules (Civil Rule 56 and Civil Rule 52) which affected the outcome of the case?

Why would the court not identify each claim to show the evidence that there is no genuine dispute as to any material fact?

To be specific, on July 16, 2021, a hearing on the motion for summary judgment was scheduled for 9:00a.m., without having had any Pretrial Conferences; Scheduling; Management, for purposes of improving the quality of the trial through more thorough preparation for attorneys and any unrepresented parties, Pursuant to Fed. R. Civ. P. 16(a)(b)(c)(d)

The parties were notified at or around 8:25a.m., the morning of the hearing and told the hearing would not be held and that Judge Rumbaugh would be deciding the motion on the pleadings.

Motions for judgment on the pleadings are governed by the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6). The court's review of such motions is strictly limited to the contents of the parties' pleadings and any documents attached thereto. Effectively, Rule 12(c) provides the benefits of the entry of judgment while strictly examining the sufficiency of the pleadings.

Furthermore, why would the court deprive plaintiff due process of her "Complaint for Damages"[2] filed on March 18, 2021, assigned to The Honorable Elizabeth Martin, Judge? The Complaint was disrupted of its proceedings by the improper "Motion for Summary Judgment"[3] filed on May 22, 2021, by the defendant, and negated the case schedule deadlines established by the Court.

In addition, on July 13, 2021, the defendant filed a "Request for Reassignment"[4] just three days prior to the scheduled hearing (July 16, 2021) for summary judgment. Judge Rumbaugh replaced Judge Martin, without any notification to the plaintiff and within a couple of days, Judge Rumbaugh called off the hearing without notice.

> All motions and other proceedings in a civil case shall be brought before the assigned judge, in accordance with LCR 7.

The motion was not held; there were no Pretrial Conferences to show evidence that any of the genuine issues of material fact were disputed.

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[2]CP 4 to 27
[3]CP 30
[4]CP 56

There was no Transcription, no Verbatim Report of Proceedings from a trial court to obtain Court Reporter(s)/Transcriptionist(s) to understand the bases for the Court order[5] granting summary judgment for the defense.

Under Rule 56(e) When a motion for summary judgment is made and supported as provided in the rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Did the court error because it did not apply the law and consider the facts undisputed for purposes of the motion? *Lauture v. International Bus. Mach, U.S. Court of Appeals, (2d Cir. 2000) review reversed.*

Both statute and case law agree that due process is denied whenever bias taints an administrative proceeding.

Plaintiff was misled by the court to believe the motion was proper.

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[5]CP 322 - 323

2. Why would the court not comply with the case schedule established (by the court) for parties to work towards a resolution of dispute in the Complaint for Damages case filed March 18, 2021?

Why would the court deprive plaintiff of Constitutional Due Process, Fifth and Fourteenth Amendment Rights and Rule of law?

Why would the court allow an improper motion for summary judgment filed on May 22, 2021, to cause an interference with the Complaint for Damages case without a court order?

The court's failure to follow the case deadlines established for the "Complaint" negated the process necessary for the court to review the evidence showing that there are no issues of material fact.

There were no Pretrial Conferences to allow the parties to work towards a resolution of dispute for the court to gain a comprehensive review of the identifiable issues of material fact to rightfully analyze if any of the facts even collectively, conclusively negate a necessary element of the plaintiff's case or demonstrate that under no hypothesis is there a material issue of fact that would require a reasonable trier of fact not to find any underlying material fact more likely than not.

For example, Martin improperly filed the motion for summary judgment on May 22, 2021, and interfered with plaintiffs' "Confirmation of Joinder of Parties, Claims, and Defenses".

The motion was inappropriately scheduled for hearing on July 16, 2021, without due process and **just one calendar date after the "Confirmation of Joinder of Parties, Claims and Defenses"** [6] **was due, July 15, 2021,** (filed July 14, 2021).

Why would the court error to follow the rule of law? The motion was filed out-of-sequence and interfered with the "defendant answers" to plaintiff's claims and defenses, Pursuant to Civil Rule 12.

In addition, the court error to recognize that Martin also failed to reply with "disclosures and answers" to **"Plaintiff's Response in Opposition to Defendant Thaddeus Martin's Motion for Summary Judgment"** [7] filed July 6, 2021, with memoranda, declaration and exhibits. The court ignored that the Defendant failed to file pleadings and other disclosures for both documents:

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[6]CP 57 - 89
[7]CP 31 - 55

1) established by the Court and 2) filed out-of-sequence, Pursuant to Rule 16.

Rule 16 was amended in 1983 to require scheduling orders that govern pre-trial as well as trial procedure. The purpose of the change was to improve the efficiency of federal litigation; leaving the parties to their own devices until shortly before trial was apparently costly and resulted in undue delay.

In United States Constitutional Law, a Due Process Clause is found in both the Fifth and Fourteenth Amendments to the United States Constitution, which prohibits arbitrary deprivation of "life, liberty, or property" by the government except as authorized by law.

The court violated Osborne's Constitutional right to due process under the Fifth and Fourteenth Amendments to be treated with fairness in this legal procedure.

3. Why would the court fail to recognize that Martin provided no "answers" to Plaintiff's Confirmation of Joinder of Parties, Claims, and Defenses" and no "answers" to Plaintiff's Response in Opposition to Defendant Thaddeus Martin's Motion for Summary Judgment"?

In other words, the Court had no pleadings, discovery and disclosure materials on file from Martin showing the absence of a genuine issue of material fact to rule in favor of the defendant.

Why would the court withhold that the **defendant was in default** because he did not respond within the time limit set forth, Pursuant to Civil Rule 12?

To meet the burden, the defendant must "present evidence, and not simply point out through argument, that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." *Pisaro v. Brantley (1996) 42 Cal. 4th 826, 851.*

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case "bears the initial responsibility of informing the district court of the basis for its motion" *Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)* and identifying those portions of "the pleadings, the discovery and disclosure materials on file, and any affidavits" that

show the absence of a genuine issue of material fact (Fed.R.Civ.P.56(c)).

Once the moving party has satisfied its burden, it is entitled to summary judgment if the nonmoving party fails to designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp., 477 U.S. at 324.*

"The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient," and factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).* In other words, "Summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor." *Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995).*

"Only when the defendant has satisfied this burden does the burden shift and does the Court have to determine whether the plaintiff has

demonstrated the existence of a triable issue of material fact."

Pisaro, 42 Cal.App.4th at 1602.

> Rule 60 (b)(4) Extrinsic Fraud, Misrepresentation and Misconduct, evidence not properly before the court, jury, or other determining body.

Fraud is intended to employ dishonesty to deprive another of money, property or a right; it can also be a crime. It includes failing to point out or not revealing fact which he/she has a duty to communicate. Extrinsic fraud occurs when deceit is employed to keep someone from exercising a right, such as a fair trial, by hiding evidence or misleading the opposing party in a lawsuit.

4. Why would the court withhold evidence that the plaintiff demonstrated the existence of triable issues of material fact; a triable issue noted by The Honorable Robert S. Lasnik, U.S. District Judge?

Why would the court withhold evidence that the defendant was in breach of his contract and did not satisfy its burden?

A court's thorough review of the memoranda, declarations, and exhibits submitted by Plaintiff should have distinguished a proper

foundation laid for a trial. The evidence attached to the Declaration of Deborah Osborne show Judge Lasnik's **order denying[8] Martin's motion to continue trial and related dates.** Judge Lasnik noted Martin failed to conduct a timely discovery into Osborne's claims and did not show good cause for "a continuance for six months to push out the discovery deadline." and stated, "It appears that the motion is prompted by the need to take discovery after the discovery period had closed rather than the fear of a potential conflict that may arise three months from now."

There are triable issues of fact and granting of the motion for summary judgment was an abuse of discretion by the court. *Avila v. Standard Oil Co. (1985) 167 Cal.App. 3d 441, 446.*

In other words, "summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor." *Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995).*

[8] CP 90 – 318 (Exhibit 14)

Why did the court fail to recognize that Martin breached his own Attorney Retainer Agreement[9] to represent his client in her Discrimination and Retaliation claims?

5. Why did the court fail to include The Boeing Company, a third-party defendant to the controversy?

In Plaintiff's, Confirmation of Joinder of Parties, Claims and Defenses, Form F,[10] filed July 14, 2021, it included Boeing, Pursuant to Civil Rule 19.

The improper summary judgment interfered with the case schedule to amend complaint to include Boeing.

Why would the court fail to comply with its duties to oversee and manage the case schedule established and follow the procedures to conduct the case in accordance with the deadlines established by the court[11] and rule of law?

For example, there was an immediate interference in the process for reviewing the "disclosure material" to which the summary was sought, if in fact this motion had been proper.

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[9] CP 90 – 318 (Exhibit 1)
[10] CP 319
[11] CP 1

6. Why would the court not disqualify itself for having a personal bias and for demonstrating unfairness and partiality?

In 1994, the Supreme Court removed any doubt on this score, with its opinion in *Liteky v. United States :: 510 US 540 (1994)*. The case arose in the context of a claim that the judge's impartiality might reasonably be questioned and that he was disqualified under § 55(a). For that reason the case is discussed at length in the section dealing with that very important ground of disqualification.(10) In the course of the decision, however, the Court equated the bias or prejudice tests of §144 and §45(b)(1). Justice Scalia, speaking for the Court, explained that §455(b)(1) "entirely duplicated the grounds of recusal set forth in §144 ('bias or prejudice') but (1) made them applicable to all justices, judges, and magistrates (and not just district judges), and (2) placed the obligation to identify the existence of those grounds on the judge himself, rather than requiring recusal only in response to a party affidavit."

Why would the court accept a "Request for Reassignment" to replace Judge Martin and within a couple of days decide not to have a hearing? Why would the court abuse its authority in this case?

Why would the Court error in its order and deprive Plaintiff right to a fair hearing when she filed the Note for Motion Docket [12] for a New Judge [13] and a Motion for Reconsideration.[14]

The court denied Plaintiff's Motion for a New Judge [15] and Motion for Reconsideration. [16]

Why would the court not reconsideration its decision? Why would the court not allow a New Judge to review the case?

The Court undermined the fairness and integrity of the judicial system, causing a miscarriage of justice. Plaintiff filed an Appeal.[17]

7. Why would the court fail to follow due process to get a resolution to a legal dispute of parties?

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[12]CP 324 - 325
[13]CP 327 - 331
[14]CP 335 - 380
[15]CP 382
[16]CP 381
[17]CP 383 - 388

Under Civil Rule 56, in order to succeed in a motion for summary a movant must show 1) that there is no genuine dispute as to any material facts, and 2) that the movant is entitled to judgments as a matter of law.

"[U]nless a movant meets its initial burden of establishing that the nonmovant has either a complete lack of evidence or has an insufficient showing of evidence to establish the existence of an essential element of its case upon which the nonmovant will have the burden of proof at trial, a trial court shall not grant a summary judgment." *Pennsylvania Lumbermen Ins. Corp. v. Landmark Elec., Inc.*, 110 Ohio App.3d 732, 742, 675 N.E.2d 65 (2nd Dist. 1996). Once the moving party satisfies its burden, the nonmoving party bears a corresponding duty to set forth specific facts to show that a genuine issue exists. *Dresher, supra at 289.*

III. STATEMENT OF THE CASE

1. This case involves a "Breach of Contract" to perform according to the terms of the agreement that was executed between Thaddeus Martin and Deborah Osborne in November of 2014.

Martin failed to represent Osborne's against The Boeing Company for ongoing acts of employment discrimination and retaliation she experienced because of her race, African American, in violation of Washington State Law Against Discrimination ("WLAD") Ch. 49.60 et seq.

2. Osborne's career as an employee with Boeing began on August 22, 1980. During that time, she was recognized for her achievements and considered a valuable employee.[18] Prior to taking an early retirement, she went on medical leave for Post-Traumatic Stress Disorder (PTSD)[19] she worked as a level 4 Contracts Procurement Agent for over 20 years. She had no concerns with Boeing until December of 2012, when she received a lower than expected rating from her manager Eric Slagle, Caucasian male newly promoted to his position.

3. Osborne engaged in statutorily protected activity and suffered an adverse employment action in which she provided documentary evidence of material fact to Martin that a reasonable jury could conclude as a Prima Facie case of discrimination in

[18]CP 90 – 318 (Exhibit 2, Pages 1 & 2)
[19]CP 90 – 318 (Exhibit 24)

violation of WLAD. Instead of Martin conducting a timely discovery in to his clients' case to clarify and develop her causes of action and relate them with the corresponding statutes. Martin fabricated that Boeing retaliated against Osborne in violation of the WLAD because her former Manager Eric Slagle, gave her a negative performance evaluations after she complained that he was having an affair. On the contrary, Osborne's documented facts tells a different story, the sexual relationship was consensual and it occurred in April or May of 2013,[20] after Osborne had already complained about her negative Performance Rating in December of 2012.

4. This lawsuit for breach of contract meets the six-year statute of limitations, Pursuant to RCW 4.16.040. Martin breached his contract to represent Osborne's discrimination causes of action accurately and in accordance with WLAD, and thereby deprived her of a Prima Facie case sufficiently established with evidence to continue trial.

5. In the underlying case, Martin highlights a sexual relationship throughout the memoranda that does not involve any

[20]CP 90 – 318 (Exhibit 9, Page 1)

form of discrimination, much less discrimination on the basis of a protected characteristic. Martin could not speak competently on any aspect of Osborne's claims because he failed to conduct a timely discovery in to his clients' case.

6. On November 2014, Osborne provided Martin 11 causes of action that she believed to be discriminatory, listed in her Boeing EEO Complaint, dated September of 2013.[21] The claims related to incidents of: 1) discrimination; 2) harassment; 3) subject to a hostile work environment; and 4) disparate treatment discrimination, and 5) unlawful retaliation in violation of common law and statute, RCW Ch.49.60 et. seq. It also includes witnesses; managers, executives, Boeing EEO, Alternate Dispute Resolution and Human Resources groups called upon to correct the issues due to Osborne's protective class.

The 1st claim relates to Osborne being treated less favorable than her Caucasian counterparts because of her race. Prima Facie Case is a cause of action or defense that is sufficiently established by a party's

[21]CP 90 – 318 (Exhibit 5, Pages 1 – 13)

evidence to justify a verdict in his or favor. *Alonso v. Quest Commc'ns., LLC, 178 Wn. App. 734, 754 (2013).*

In particular, Osborne had a disproportion of workload compared to her level 4 Caucasian counterparts, a total of six level 4 Contracts Procurement Agent in Slagle's group. In December 2011, 9 months into his roles as Osborne manager, Slagle issued Osborne a "highly effective" Individual Performance Assessment ("IPA") rating for her above-average number of contracts compared to her Caucasian counterparts, who was also issued a "highly effective" IPA rating having fewer packages. Specifically, Tanya Ferrieri, Caucasian counterpart, told Osborne that Slagle had given her a "highly effective" IPA rating when she had "no contract activities" and that **she was told he would expect her to contribute more the following year (2012).** Ferrieri spent most of her time training and taking classes; and not equally working contract activities.

Slagle stated, "Deborah [Osborne] has impressed me. . . .this year. Her performance negotiating the SGPP [Saint-Gobain Performance Plastic] contract was exemplary, and I look forward to working with you the second half of the year".

In July 2012, Slagle stated in Osborne's Mid-Year Review "Deborah [Osborne] has done a good job moving the Kaman contract along while at the same time staying on top of other contracts."

However, in December 2012, a mere five months later Slagle issued a Performance Management Review ("PMR") that dropped Osborne's ("IPA") rating by two levels, an unheard of downturn for someone with such an established tenure as Osborne without any prior notification stating "based purely on the numbers she has less than the average number of suppliers/contracting activities compared to the team, and a main driver for her IPA rating last year with her above-average number of packages".

Slagle did not take in to account the complexity of Osborne's contracts. The nature of each contract is unique to commodity; number of parts in the contract; the dollar value; contract expiration dates; developing contracting strategies; and difficulty of negotiations – all of which should be considered when level-loading work between employees and evaluating their performance.

Osborne not only had an equal number of contracts but her contract with Kaman Aerospace was equivalent to 4-contracts (See "Situation

#2").[22] Kaman was one of John Byrne, then-Vice President BCA SM, top 5 priority suppliers which included special activities not required from non-priority suppliers. Byrne's Interior's group with priority suppliers had "only one supplier" to manage. Unlike Osborne, she had Kaman (a priority supplier) and eight additional suppliers to manage in Byrnes' Materials, Parts and Assembly group. Slagle knew this supplier took a generous amount of Osborne's time, which is why he noted in her 2012 PM in July 2012, during her mid-term review "Deborah has done a great job moving the Kaman contract along while at the same time staying on top of her other contracts." The work in Slagle's group was not distributed properly.

A seasoned Procurement Manager with contracting experience knows and understands these complexities, factors them into the equation, and rate the employees accordingly. Slagle set roadblocks against Osborne to cause her to fail[23] he refused to allow her to work overtime when requested to maintain her heavy workload. Slagle did not have the same rules for Osborne's Caucasian counterparts who were treated more favorable. Plaintiff worked overtime "without

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[22]CP 90 – 318 (Exhibit 5, Page 3)
[23]CP 90 – 318 (Exhibit 5, Page 3 - 13)

pay" to maintain her heavy workload, and some days she worked until 10:00 p.m., 11:00 p.m. or 12:00 midnight.

7. In the underlying case, Judge Lasnik stated[24], Osborne "need only prove that her complaints went to conduct that was at least arguably a violation of the law, not that her opposition activity was to behavior that would actually violate the law against discrimination." *Estevez, 129 Wn. App. At 798; see also Currier v. Northland Servs. Inc., 182 Wn. App. 733, 746 review denied, 182 Wn.2d 1006 (2015)* (stating that "Washington cases have likewise held that a plaintiff need not prove the conduct opposed was in fact discriminatory but need show only that he or she reasonably believed it was discriminatory.") The Court determines whether a plaintiff's complaint was based on a reasonable belief that discrimination occurred by "balance[ing] the setting in which the activity arose and the interests and motives of the employer and employee." *Kahn v. Salerno, 90 Wn. App. 110, 130 (1998) (internal quotations omitted).*

[24]CP 90 – 318 (Exhibit 8, Page 6 at 4 – 16)

8. Denise Adair,[25] Caucasian counterpart of plaintiff, was a level 5 Contracts Procurement Agent, who had no responsibilities but was promoted to this level to assist the group with Contracting Strategies and never developed any strategies to contributed to the group. However, Osborne a level 4, Contracts Procurement Agent was a Project Manager for her supplier Kaman, tasked to create 4-strategies and pitch them to her team and support high level meetings and status, while at the same time managed 9 total suppliers and was issued a Moderately Effective rating to levels below Highly Effective rating within five-months.

9. Since Martin failed to conducted a timely discovery, he was not able to contact Kathleen Jinguji,[26] Mediator, in Boeing Alternative Dispute Resolution (ADR) Internal System, she determined in her review of the group's workload that Osborne's number of contracts was equal to her level 4 Caucasian counterparts who maintained their "highly effective" IPA rating; but nothing was done by Boeing management to correct Osborne's IPA rating.

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[25]CP 90 – 318 (Exhibit 5, Page 7)
[26]CP 90 – 318 (Exhibit 3, Section 5.6)

In other words, Jinguji noted that each of Slagle's level 4 employees had 9 suppliers, but Osborne was the only one in the group with a priority supplier. A priority supplier consumes over 80% of an employee's time and other organizations with priority suppliers had only one supplier to dedicate their time to. A priority supplier is a high visibility supplier whose commodity is complex and reviewed by management or leadership weekly; less or more depending on the circumstances.

10. Since Martin failed to conduct a timely discovery, he was not able to contact Alan May,[27] then-Vice President of Human Resources, (Business Unit for the State of Washington) to gain an understanding of his clients' complaint. On July 17, 2013, Osborne reached out to May, to discuss Slagle's failure to follow Boeing's Policies and Procedures for PM and IPA ratings as outlined in The Salary Management Handbook and Salary Review processes. May stated, he didn't normally get involved with complaints having to do with PM, but made an exception since Osborne's PM rating was downgraded by two levels in just five months without any prior notification. May stated, Slagle could not change an employee's IPA

[27]CP 90 – 318 (Exhibit 12)

rating without first having a meeting (mid-year review) with the employee to identify performance deficiencies and outlining corrective actions for improvement. May stated to Osborne, to be downgraded by two levels in less than five months would indicate an employee is not working at all. May apologized to Osborne and stated he felt bad about the rating and he knows if he felt bad, he knows how Osborne must have felt; he did not address the issue.

Boeing stresses "Speaking Up" Elements of Leadership Matters. Speak Up. Talk with your manager and your teammates. And don't be afraid to ask for help or raise issues". Jim McNerney, Boeing Chairman, President and CEO, 2012 Ethics Recommitment Training.

Speaking Up without fear of consequences, that's one of the building blocks of an inclusive culture and is absolutely critical to our ability to innovate and perform at our best." Ray Conner, Executive VP, The Boeing Commercial Airplanes.

11. Since Martin failed to conduct a timely discovery, he was not able to contact Catherine Hawkins,[28] Senior Manager, and Slagle's manager; Osborne reached out to Hawkins for assistance

[28]CP 90 – 318 (Exhibit 5, Pages 3- 13; Exhibit 3, Section 5.2)

when Slagle was being unreasonable. For instance, Slagle tried to reassign Kaman to a Caucasian level 4 Contracts PA, when the contract was nearly completed, only to give Osborne four additional contracts exchange, but Hawkins intervened. Slagle made changes without notice to set roadblocks for Osborne as noted in her claims.

12. Since Martin failed to conduct a timely discovery, he was not able to contact Marsha Morris, [29] a former Boeing Manager and Mentor, who was previously Osborne's manager in BCA/SM. Morris is familiar with the PM process used to evaluate employees performance and has experience level-loading contract activities based on complexities and part numbers and not based on the number of contracts; so that the workload is distributed evenly.

13. On March 18, 2021, Osborne filed a "Complaint for Damages"[30] against Martin for "Breach of Contract" to perform to the terms of his own contract agreement to represent her against The Boeing Company for ongoing acts of employment discrimination and retaliation in violation of Washington State Law Against Discrimination ("WLAD") Ch.49.60 et. seq.

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[29]CP 90 – 318 (Exhibit 10 and Exhibit 11)
[30]CP 4 - 27

Martin deviated from Osborne's claims and deliberately fabricated a sexual relationship instead of stating the claims provided to him.

A district court must dismiss a claim if it "fail[s] to state a claim upon which relief can be granted. "Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)).* A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. If the complaint fails to state a cognizable legal theory or fails to provide sufficient facts to support a claim, dismissal is appropriate. *Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984).*

14. If the Court dismisses a claim in plaintiff's complaint, it must consider whether to grant leave to plaintiff to amend. *Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).* Federal Rule of Civil

Procedure 15(a) sates that trial courts shall grant leave to amend freely when "justice so requires." *Lopez*, 203 F.3d at 1130. When a Court dismisses a complaint pursuant to Rule 12(b)(6), leave should be freely given to amend unless the court "determines that the pleading could not possibly be cured by the allegation of other facts." Id. This is true even when the plaintiff has not specifically requested to amend. Id. If leave to amend would be futile, dismissal with prejudice is appropriate. Id.

15. Martin filed Plaintiff's first complaint on February 5, 2015. On February 25, 2015,[31] defendant [Boeing] filed its first motion to dismiss without providing Plaintiff with its initial disclosure documents. The court allowed Martin to re-plead all claims March 10, 2015 (except for the common law claims that were dismissed with prejudice). However, on May 11, 2015, Martin filed Plaintiff second amended complaint and yet again Martin limited Osborne's claims to "retaliation related to Ferrieri" sexual relationship[32] that had nothing to do with Osborne's claims and he

[31]CP 90 – 318 (Exhibit 8, Order, Page 11 at 14-28)
[32]CP 90 – 318 (Exhibit 4, Pages 1- 3)

forfeited the opportunity to re-plead her WLAD claims; stating the court limited her claims to the sexual relationship.

Boeing provided plaintiff with its initial disclosure documents on March 27, 2015 and on April 30, 2015, in its order regarding defendant's first motion to dismiss, the Court allowed Plaintiff to re-plead all claims (except for the common law claims that were dismissed with prejudice). Plaintiff [Martin] did not file her second amended complaint until May 11, 2015. This timeline shows that Boeing's initial disclosures are not "newly discovered evidence" under Rule 60(b)(2)–Plaintiff [Martin] had the opportunity to address the information contained within Boeing's initial disclosure documents when Plaintiff [Martin] filed her second amended complaint. *See Coastal Transfer Co., v. Toyota Motor Sales, U.S.A., 833 F.2d at 212* (stating that "[e]vidence is not 'newly discovered' under the Federal Rules if it was in the moving party's possession at the time of trial or could have been discovered with reasonable diligence."). And other than pointing to defendant's initial disclosure documents and answer in a wholly conclusory. Martin does not

clearly articulate what the "newly discovered evidence" is or how any new evidence impacts the Court's earlier rulings. [33]

16. On November 22, 2015,[34] Osborne emailed Martin with questions with regards to his memoranda, "What is Prima Facie? How did my negative Performance review in 2012, become retaliation to Slagle's affair that I was not aware of until 2013?

"I did not report Slagle's affair as retaliation to my negative Performance or IPA rating. During Boeing's Internal ADR and EEO Investigations these two subjects were addressed separately. It's unclear to me, how the affair is before Judge Lasnik as retaliation to my negative Performance Review and IPA rating; this case should be about the discrimination and retaliation from my management team; and a hostile working environment."

17. On August 17, 2021, Plaintiff filed a Notice of Appeal, because Judge Rumbaugh granted order for summary judgment to the defense without following due process. There was no hearing and the motion was improper. Judge Rumbaugh failed to provide any specific Findings of Fact and Conclusions of Law stating on the

[33]CP 90 – 318 (Exhibit 4, Pages 1- 3)
[34]CP 90 – 318 (Exhibit 11 and Exhibit 16)

records its reasons for granting the motion after the close of the evidence and filed by the court, Pursuant to Fed. R. Civ. P. 52 (a).

18. On July 22, 2021, Plaintiff's demand for a jury trial,[35] in accordance with the court's established schedule. Plaintiff notified the Appellate Court that no hearing was held on the motion and that there was no trial court or jury trial. If the motion had been proper, it would have still required a hearing on the evidence. There was no Transcription, no Verbatim Report of Proceedings from a Court Report(s)/Transcriptionist(s) to make arrangements for Plaintiff's Appeal.[36]

19. On October 13, 2021,[37] November 2, 2021,[38] and November 10, 2021,[39] (an overnight letter), Plaintiff reached out to The Honorable Philip Sorenson, Presiding Judge of The Superior Court of Pierce County, for help in obtaining any documentation that could provide her details to Judge Rumbaugh's decision. There was no record on file showing that the moving party satisfied its burden.

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[35]CP 383 – 388
[36]CP 446 – 447
[37]CP 389 – 391
[38]CP 396 – 419
[39]CP 423 – 427

The motion was improper. The documentation was needed for this Appeal.

In Judge Sorenson role, he is responsible and must take reasonable measures to assure the prompt disposition of matters before the judges he supervise and the proper performance of their responsibility. Judge Sorenson stated[40] "there is nothing about the concerns you raise that allow for my intervention". Plaintiff responded to Judge Sorenson letter;[41] correspondence was also sent to Judge Rumbaugh and Judge Martin, requesting records for the purposes of Plaintiff's Appeal.[42]

IV. SUMMARY OF ARGUMENT

Plaintiff argues that the court had a judicial responsibility to preside over her case with fairness and impartially. Judge Rumbaugh made a ruling without stating on the record how its decision was made in granting his order. The court should have

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[40]CP 422
[41]CP 428 – 433
[42]CP 436 – 440

considered the Respondent's motion improper. The court overlooked that the motion deprived the Appellant the entire process of a legal dispute of parties and if that was not enough, the Appellant was not advised of the reasons for the court's decision; and was repeatedly denied facts that the court had a duty to communicate, Rule 60 (b)(4). There was nothing stating on the record the reasons for granting the motion after the close of the evidence and filed by the court, Pursuant to Fed. R. Civ. P. 52(a).

The court accepted the reassignment to preside over this case on July 13, 2021, and in less than 3-days, the morning of the hearing the court decides not to have a hearing. **The summary judgment was improper,** just as it was, in the underlying case, *Deborah Osborne v. The Boeing Company,* when Boeing filed its motion for summary judgment against Plaintiff without providing Plaintiff with its initial disclosures documents. Judge Lasnik called the motion improper. Why didn't Judge Rumbaugh know the motion was improper?

A Fed. R. Civ. P. 60(b) motion can only be brought after a final judgment or order; interlocutory orders are insufficient to

trigger a Rule 60(b) motion. *See Connors v. Inquique U.S.L.L.C., 2005 WL 3007127, at *7 (W.D. Wash. Nov. 9, 2005)* (stating that Rule 60(b)'s "Advisory Committee Notes clarify that the adjective 'final' applies not only to 'judgment,' but to 'order' and 'proceeding' as well.").

Considering no "final" order had been issued in the case of Deborah Osborne v. Thaddeus Martin, Pursuant to Rule 60(b)(2) the motion is improper and should be reversed.

On May 22, 2021, when Martin filed the motion, Judge Martin overlooked that it was improper.

On July 13, 2021, when Judge Rumbaugh accepted the reassignment he 1) overlooked that the motion was improper; 2) overlooked that it interfered with Plaintiff's Complaint established by the court; 3) overlooked that the defendant provided no disclosure documents; 4) overlooked that he had little knowledge of the case; 5) overlooked that there had been no final judgment, no order, or proceeding; 6) overlooked that only when the defendant has satisfied its burden does the burden shift and does the court have to determine whether the Plaintiff has demonstrated the existence of a triable issue of

material fact; 7) overlooked that Judge Lasnik noted the defendant had failed to take a timely discovery; 8) overlooked that the plaintiff was deprived due process; 9) overlooked that he had a personal bias; 10) overlooked that he demonstrated partiality; prejudice and unfairness in his decision not to reconsideration the case; 11) overlooked disqualifying himself and allowing a New Judge to review the case; 12) overlooked that his biases; partialities; prejudices and unfairness created more work for the Appellant to fight for a right to be heard; and 13) overlooked his oath in this case repeatedly to be fair and impartial .

"A fair trial in a fair tribunal is a basic requirement of due process". *Murchison, 349 U.S. 133, 136 (1955).*

The judge in this case served as a "one-man grand jury". This was a violation of the Due Process Clause of the Fourteenth Amendment, Pp. 349 U.S. 133-139.

Plaintiff argues that Martin had no evidence to support the absence of Osborne's genuine issues, so he employed deceit utilizing his privilege with the court (Judge Martin, Judge Rumbaugh and others)

to deprive Osborne of her right to a fair hearing, by hiding evidence and misleading her in this lawsuit. RCW 60 (b)(4)

"Only when the defendant has satisfied this burden does the burden shift and does the Court have to determine whether the plaintiff has demonstrated the existence of a triable issue of material fact." *Pisaro, 42 Cal.App.4th at 1602.*

V. ARGUMENT

The standard of review on appeal of a summary judgment order is de novo, considering the facts and the inferences from the facts, as if the case was being heard for the first time.

This case is on an Appeal because, Judge Rumbaugh, granted an improper order for summary judgment to Thaddeus Martin, Respondent on July 22, 2021, while knowing the motion for summary judgment was improper, there was no final judgment; there was no order; and there was no proceeding.

Appellant argues that Judge Rumbaugh knew the motion was improper but, if Osborne an unrepresented party was not aware that

it was improper, he was willing to disregard his oath to be fair and impartial, as a personal bias to the Respondent.

Osborne argues that Judge Rumbaugh and Judge Martin knew that Martin had no disclosure documents to prevail in this case; and that Osborne had documentary evidence since September of 2013, when she filed her complaint with Boeing EEO.

Osborne argues that Judge Rumbaugh had no intentions of presiding over the case lawfully; he had only accepted the reassignment for a personal bias, and demonstrated it in this case. This is what partiality, unfairness and prejudice looks like to the unrepresented and to people of color.

Osborne argues that when Judge Rumbaugh ignored her evidence and The Honorable Robert S. Lasnik, U.S. District Judge, order denying Martin's motion to continue trial because he did not take a timely discovery. Osborne knew there were going to be issues. Judge Lasnik clearly stated Martin had not taken a timely discovery and "It appears that the motion is prompted by the need to take discovery after the discovery period is closed rather that the fear of a potential conflict that may arise three months from now."

Since Martin had not taken discovery, Judge Rumbaugh knew Martin had no verifiable knowledge of Osborne case to represent her with competence. Martin's memoranda[43] is described as a mere recital, he failed to incorporate any corresponding statutes to relate WLAD or case law to support his memoranda.

Judge Rumbaugh had no Pretrial documentation to gain a comprehensive review of the identifiable issues for purposes of improving the quality of the trial through more thorough preparation for attorneys and any unrepresented parties. The parties had no required conferences to work towards a resolution of dispute and to simplify the issues and eliminate frivolous claims and defenses.

Osborne argues even if the hearing had been held on July 16, 2021, Judge Rumbaugh would have needed more than a couple of days to review this case to make a fair and impartial decision. The Plaintiff's complaint was in its first stages of the schedule, and Martin had not provided any disclosures and evidence; the discovery period had not begun, yet the court granted an order for an improper summary judgment.

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[43]CP 90 – 318 (Exhibit 3)

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact that would preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case "bears the initial responsibility of informing the district court of the basis for its motion," *Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)*, and "citing to particular parts of materials in the record" that show the absence of a genuine issue of material facts. Fed. R. Civ. P. 56(c).

CR 56(c) gives in part that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together or with affidavits, if any show there is no genuine issues as to material fact and that the moving party is entitled to a judgment as a matter of law."

Once the moving party has satisfied its burden, it is entitled to summary judgment if the nonmoving party fails to designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp., 477 U.S. at 324*. The Court will "view the evidence in the light most favorably to the nonmoving party . . . and draw all

reasonable inferences in that party's favor." *Krechman v. Cnty of Riverside, 723 F.3d 1104, 1109 (9th Cir. 2013)* (internal quotations omitted). Although the Court must reserve for the jury genuine issues regarding credibility, the weight of the evidence, and legitimate inferences, the "mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient" to avoid judgment. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).* Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *S. Cal. Darts Ass'n v. Zaffina, 762 F.3d 921, 925 (9th Cir. 2014).* In other word, summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor. *FreecycleSunnyvale v. Freecycle Network, 626 F.3d 509, 514 (9th Cir. 2010).*

Osborne argues that she will not be able to secure a fair trial in Pierce County Court, due to bias treatment experienced in this case, being Black, Pro Se, and that the defendant practices law primarily in Pierce County before the civil Pierce County judges. A change of venue from Pierce County Superior Court to United States District

Court Western District of Washington at Seattle is appropriate to avoid partiality, unfairness, prejudices, and bias treatment.

Osborne believes the court violated her U.S. Constitutional Due Process; Fifth and Fourteenth Amendment Rights.

V. CONCLUSION

For all of the foregoing reasons, Appellant respectfully submit that this Court reverse the order of summary judgment and remand this matter to the United States District Court Western District of Washington at Seattle.

DATED this 6th day of May, 2022

I certify that pursuant to RAP 18.7, that this Brief contains 8,207 words.

Deborah Osborne, Pro Se

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington, that a copy of the foregoing APPELLANT'S AMENDED OPENING BRIEF was served on the date given below, to the individuals named in the manner indicated:

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BY _____
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DATED this 6th day of May 2022, at Federal Way, Washington.

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